REMARKS

Favorable reconsideration of this application is respectfully requested in view of the amendments above and the following remarks. By virtue of the claim amendments, Claims 1, 6, 8, 14, 15, and 20 have been amended and Claims 21-26 have been added. In addition, Claims 5, 13, and 19 have been canceled without prejudice or disclaimer of the subject matter contained therein. Therefore, Claims 1-4, 6-12, 14-18, and 20-26 are currently pending in the present application.

No new matter has been introduced by way of the claim amendments or additions, entry thereof is therefore respectfully requested.

Drawings and Information Disclosure Statement

The indication that the Drawings filed on May 15, 2001 have been accepted is noted with appreciation. In addition, the indication that the documents cited in the Information Disclosure Statement filed on May 15, 2001 have been considered is also noted with appreciation.

Claim Rejection Under 35 U.S.C. §102

The test for determining if a reference anticipates a claim, for purposes of a rejection under 35 U.S.C. § 102, is whether the reference discloses all the elements of the claimed combination, or the mechanical equivalents thereof functioning in substantially the same way to produce substantially the same results. As noted by the Court of Appeals for the Federal Circuit in *Lindemann Maschinenfabrick GmbH v. American Hoist and Derrick Co.*, 221

USPQ 481, 485 (Fed. Cir. 1984), in evaluating the sufficiency of an anticipation rejection under 35 U.S.C. § 102, the Court stated:

> Anticipation requires the presence in a single prior art reference disclosure of each and every element of the claimed invention, arranged as in the claim.

Therefore, if the cited reference does not disclose each and every element of the claimed invention, then the cited reference fails to anticipate the claimed invention and, thus, the claimed invention is distinguishable over the cited reference.

Claims 1, 5, 8, 13, 15, and 19 have been rejected under 35 U.S.C. §102(e) as allegedly being anticipated by the disclosure contained in U.S. Patent No. 6,611,613 to Kang et al. This rejection is respectfully traversed because the claimed invention as set forth in Claims 1, 8, and 15, and the claims that depend therefrom are patentably distinguishable over the disclosure contained in the Kang et al. document.

It is respectfully submitted that Kang et al. fails to disclose all of the elements set forth in amended Claims 1, 8, and 15. For instance, Kang et al. fails to disclose the step of automatically determining if there exists a red eye artifact as set forth in Claims 1 and 15 of the present invention. In addition, Kang et al. fails to disclose a module for automatically determining if there exists a red eye artifact as set forth in Claim 8 of the present invention. At least by virtue of the lack of disclosure of these elements, Kang et al. fails to meet the requirements of anticipation as described hereinabove.

Accordingly, Kang et al. cannot anticipate Claims 1, 8, and 15. The Examiner is therefore respectfully requested to withdraw the rejection of Claims 1, 8, and 15. Moreover, the Examiner is respectfully requested to provide an indication that Claims 1, 8, and 15 and the claims that depend therefrom are allowable over the disclosure contained in Kang et al.

Claim Rejection Under 35 U.S.C. §103

The test for determining if a claim is rendered obvious by one or more references for purposes of a rejection under 35 U.S.C. § 103 is set forth in MPEP § 706.02(j):

> To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on applicant's disclosure. *In re Vaeck,* 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

Therefore, if the above-identified criteria are not met, then the cited reference(s) fails to render obvious the claimed invention and, thus, the claimed invention is distinguishable over the cited reference(s).

Kang et al. in view of Surve et al.

The Official Action sets forth a rejection of Claims 2-4, 9-12 and 16-18 under 35 U.S.C. §103(a) as allegedly being unpatentable over the disclosure contained in Kang et al. in view of U.S. Patent No. 6,591,008 to Surve et al. This rejection is respectfully traversed because Kang et al. considered singly or in combination with Surve et al. fails to disclose all of the elements of Claims 2-4, 9-12 and 16-18.

As set forth hereinabove, Kang et al. fails to disclose all of the elements of the independent Claims 1, 8, and 15. As an example of Kang et al.'s failure, it was shown that Kang et al. fails to disclose that the existence of a red eye artifact is automatically determined. The Official Action does not rely upon the disclosure contained in Surve et al. to

make up for these deficiencies in Kang et al. Instead, the Official Action asserts that Surve et al. discloses various image appearance enhancing elements as set forth in Claims 2-4, 9-12 and 16-18. Although the Applicants disagree with this assertion, nevertheless, the proposed combination fails to make up for the deficiencies in Kang et al. Accordingly, the Examiner is respectfully requested to withdraw the rejection of Claims 2-4, 9-12 and 16-18.

Kang et al. in view of Surve et al. and Acker et al.

The Official Action sets forth a rejection of Claims 6, 14, and 20 under 35 U.S.C. §103(a) as allegedly being unpatentable over the disclosure contained in Kang et al. in view of Surve et al. and U.S. Patent No. 6,009,209 to Acker et al. This rejection is respectfully traversed because Kang et al. considered singly or in combination with Surve et al. and Acker et al. fails to disclose all of the elements of Claims 6, 14, and 20.

The Official Action relies upon the disclosure contained in Acker et al. for its alleged disclosure of "a module for automatically determining if there exists a red eye artifact." This allegation is improper because Acker et al. states that "***[a]fter the area of the red eye effect is identified by the user in the source image***, the apparatus and method of the invention identifies and stores in a memory of the computer system attributes of the discoloration causing the red eye effect." (emphasis added) (column 2, lines 8-12). Clearly, Acker et al. discloses that a user identifies the area of the red eye effect. Therefore, the argument presented in the Official Action that Acker et al. discloses "a module for automatically determining if there exists a red eye artifact" is invalid and erroneous.

In addition, at least by virtue of Acker et al.'s failure to disclose the elements as described hereinabove, the proposed modification of Kang et al. with the disclosures of Surve

et al. and Acker et al. would still fail to yield all of the elements of the present invention as set forth in Claims 1, 8, and 15. Therefore, even assuming for the sake of argument that the proposed modification of Kang et al. as set forth in the Official Action were proper, the proposed modification would still fall short. Accordingly, the Examiner is respectfully requested to withdraw the rejection of Claims 6, 14, and 20.

Kang et al. in view of Surve et al. and Fowler

The Official Action sets forth a rejection of Claim 7 under 35 U.S.C. §103(a) as allegedly being unpatentable over the disclosure contained in Kang et al. in view of Surve et al. and U.S. Patent No. 5,410,618 to Fowler. This rejection is respectfully traversed because Kang et al. considered singly or in combination with Surve et al. and Fowler fails to disclose all of the elements of independent Claim 1.

As set forth hereinabove, Kang et al. fails to disclose all of the elements of the independent Claim 1. In addition, the Official Action does not rely upon the either of the disclosures contained in Surve et al. or Fowler to make up for these deficiencies in Kang et al. Instead, the Official Action asserts that Fowler discloses using a mapping technique to produce the image with target levels for a mean value or a variation value as set forth in Claim 7. Although the Applicants disagree with this assertion, nevertheless, the proposed combination fails to make up for the deficiencies in Kang et al. Accordingly, the Examiner is respectfully requested to withdraw the rejection of Claim 7.

Newly Added Claims

New Claims 21-26 have been added to further define the scope of the invention. Claims 21-26 are also allowable over the prior art of record for reasons similar to those set forth hereinabove with respect to Claims 1-4, 6, and 7.

Conclusion

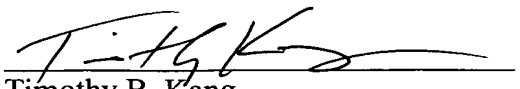
In light of the foregoing, withdrawal of the rejections of record and allowance of this application are earnestly solicited.

Should the Examiner believe that a telephone conference with the undersigned would assist in resolving any issues pertaining to the allowability of the above-identified application, please contact the undersigned at the telephone number listed below. Please grant any required extensions of time and charge any fees due in connection with this request to deposit account no. 08-2025.

Respectfully submitted,

Qian Lin et al.

Dated: July 6, 2004

By 

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